

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHRISTIAN DOSCHER,

Plaintiff(s),

v.

KROGER CO. et al.,

Defendant(s).

CASE NO. 3:21-cv-05255-TL

NINTH CIRCUIT APPEAL  
No. 23-35229

ORDER ON NINTH CIRCUIT  
REFERRAL

This matter comes before the Court on the Referral Notice from the United States Court of Appeals for the Ninth Circuit. Dkt. No. 43. The Ninth Circuit has referred this matter back to this Court for the limited purpose of determining whether *in forma pauperis* (“IFP”) status should continue for this appeal. *Id.*

28 U.S.C. § 1915(a)(3) provides that “[a]n appeal may not be taken [IFP] if the trial court certifies in writing that it is not taken in good faith.” *See also* Fed. R. App. P. 24(a)(3)(A) (“A party . . . may proceed on appeal [IFP] without further authorization, unless . . . the district court . . . certifies that the appeal is not taken in good faith or finds that the party is not otherwise

1 entitled to proceed [IFP] and states in writing its reasons for the certification or finding . . .").  
2 A good faith appeal must seek review of at least one "non-frivolous" issue or claim. *See Hooker*  
3 *v. Am. Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). A frivolous claim "lacks an arguable basis  
4 either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

5 Having reviewed the relevant record, it appears to this Court that Plaintiff-Appellant  
6 brings his appeal in good faith and that the appeal is not frivolous. Plaintiff-Appellant asserts 16  
7 claims in his action. *See* Dkt. No. 39 at 4–5. While the Court held that Plaintiff-Appellant has  
8 failed to state a claim for relief on his federal claims, the Court believes Plaintiff-Appellant has  
9 "an arguable basis" for an appeal on at least some of his claims, such as the alleged violations of  
10 the Americans with Disabilities Act or the Court's finding of qualified immunity for Officer  
11 Thompson. *See id.* at 6–9, 10–12.

12 Accordingly, the Court FINDS that this appeal is not frivolous and not taken in bad faith  
13 and DECLINES to revoke Plaintiff-Appellant's IFP status. The Clerk is DIRECTED to provide a  
14 copy of this Order to all Parties and the Ninth Circuit.

15 Dated this 15th day of May 2023.

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17 Tana Lin  
18 United States District Judge  
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